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10/646,693	08/25/2003	Stanley R. Hubbard	19951.00	9961
37833	7590	10/27/2005		
LITMAN LAW OFFICES, LTD PO BOX 15035 CRYSTAL CITY STATION ARLINGTON, VA 22215			EXAMINER MAHAFKEY, KELLY JO	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 10/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/646,693

Applicant(s)

HUBBARD ET AL.

Examiner

Kelly Mahafkey

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/25/03</u> .                                                             | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 1-8, drawn to a method of preparing/packaging a smoked fish, classified in class 426, subclass 315.
- II. Claim 9-20, drawn to an apparatus for cooking the fish on, classified in class 99, subclass 419.

1. The inventions are distinct, each from the other because:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used in different processes, including use as a drying rack or to cook a piece of beef.

2. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

3. During a telephone conversation with Dolph Torrence on September 20, 2005 a provisional election was made with traverse to prosecute the invention of group II, claims 9-20. Affirmation of this election must be made by applicant in replying to this Office action. Claim 8-11 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "a large fish" in claim 14 is a relative term, which renders the claim indefinite. The term "a large fish" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For examination purposes, the examiner will regard the claim as reciting, "a fish".

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Determining the scope and contents of the prior art.  
Ascertaining the differences between the prior art and the claims at issue.  
Resolving the level of ordinary skill in the pertinent art.  
Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 9-14, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alden et al. (US 2003/0213484), and in view of Tsai et al. (US 6016741), and Simpson (US 5832563), and Hills (US 6068312).

9. Regarding claim 9, specifically the wire smoking rack, Alden et al. (Alden) discloses of an apparatus system for grilling or smoking food items, comprising of a rectangular wire smoking rack elevated on a rectangular planar frame having four open rectangular spaces. Refer specifically to Figures 1,2, 5, 6, 11, and 12, Abstract, and Paragraph 0010. It is notoriously well known that a fish fillet can be smoked on a grill or wire smoking rack. Alden is silent in teaching an apparatus system comprising of a grill and scraper mechanism, the scraper with a knife arrangement, and a tray surface for knife holding.

10. Specifically regarding the apparatus system, which includes a grill and scraper mechanism, Tsai et al. (Tsai) teaches in Figure 1 and Column 2, lines 48-54, of a rectangular "clamshell" grill (10) that clamps a food product and is sold in a package with a scraper tool (15). It would have been obvious to one skilled in the art, at the time the invention was made to modify the grill as taught by Alden, to include a scraper tool or spatula as taught by Tsai. One would have been motivated to do so in order to obtain the benefits of a grill and scraper tool packaged together, such as a more marketable and consumer desired package. Because both items deal with a grill or grilling rack, one would have a reasonable expectation of success from the combination.

Art Unit: 1761

11. Specifically regarding the knife arrangement, Hills discloses in Column 2 lines 18-22, Figures 1, 3 and Abstract, of a barbecue tool for holding food items, such as fillets, without damaging them, comprising of knives arranged in parallel (Figure 1 (20)) with frontal sharpened grooves (Figure 3 (34)). It would have been obvious to one skilled in the art at the time the invention was made to have further modified the grill scraper as taught by Alden to include a grill scraper with frontal sharpened grooves that could also be utilized as a spatula. One would have been motivated to extend the scraper and to include knives as extended fingers to gain the benefits of a multifunctional tool that could scoop under the grill, remove a food product without damaging it (Column 2 lines 18-22), and clean the grill.

12. Specifically regarding a tray surface for knife holding, Simpson teaches of a working platform arm device (Figure 7) supporting a planar backing surface or surface tray and including a frontal portion supporting a section for various tools for improving tool holding and tool manipulation, including the ability to obtain a greater force applied through the scraper blade with less effort by the operator (Abstract, Column 1, lines 24-26 and 55-58, and Figure 10 (12)). Simpson discloses that a working arm device can be used for tools, including scrapers, Column 1 lines 55-58. It would have been obvious to one skilled in the art at the time that the invention was made to have further modified the scraper included in the grill package as taught by Alden to include the attachment of the scraper on a forearm assistant device as disclosed by Simpson. One would have been motivated to do so, in order to obtain the benefits of the forearm assistant device, such as, improved holding and tool manipulation, including the ability to obtain a greater

Art Unit: 1761

force applied through the scraper blade with less effort by the operator (Column 1, lines 24-26 and 55-58). One would have a reasonable expectation of success because the forearm assistant device is designed to work with various tools, such as scrapers (Abstract and Column 1, lines 55-58).

13. Regarding claims 10, 12, and 13, modified Alden is silent in teaching an apparatus with a working platform.

14. Simpson discloses of a plastic extension and a mold for conforming and attachable to a worker's forearm. Refer specifically to Figure 1, Column 3 lines 28-44. It would have been obvious to one skilled in the art, at the time the invention was made to have further modified the scraper included in the grill package as taught by Alden to include a center rod attached to two pivotable rods. One would have been motivated to do so, in order to take advantage of the rod assembly, such as greater mobility and flexibility for the user. One would have a reasonable expectation of success because the forearm assistant device is designed to work with various tools, such as a scraper (Abstract and Column 1, lines 55-58).

15. It would have been further obvious to one skilled in the art at the time the invention was made to attach one of the rods with a handle to a grill or smoking rack. One would have been motivated to do so, in order to obtain the benefits of the attachment, such as additional arm support for the user, minimal required user effort, and the benefits that a handle provides, such as control.

Art Unit: 1761

16. Regarding claim 11, modified Alden is silent in teaching a plastic mold form conforming and attaching to the workers upper arm that is attachable to the pair of elongated rods.

17. It would have been obvious for one skilled in the art at the time the invention was made have further modified the forearm assistant device as taught by Alden to include a plastic mold form conforming and attaching to the workers upper arm that is attachable to the pair of elongated rods. One would have been motivated to do so, in order to extend the working arm of the forearm assistant and gain the benefits of a longer working arm, such as, accomplishing a greater force from the working arm device or scraper with the same user force or pressure.

18. Regarding claim 14, Alden discloses of a grill rack, which has semi-circular channels that can be positioned in the upper-facing concave position (Paragraph 0006, lines 5-6 and 11-12).

19. Regarding claim 20, modified Alden is silent in teaching a hook or loop fastening patches on plastic molded forms provided for the workers arms. It would have been obvious for one skilled in the art at the time the invention was made have further modified the apparatus system as disclosed by Alden to include hook or loop fastening patches on plastic molded forms provided for the workers arms. One would have been motivated to do so in order to gain the benefits of hook or loop fastening patches on plastic molded forms provided for the workers arms, such as, preventative measures to



ensure sanitation. For example, if the worker were to drop the apparatus, it would not fall to the ground and become unclean and therefore rendered useless for contacting food.

20. Claims 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alden et al. (US 2003/0213484), and in view of Tsai et al. (US 6016741), and Simpson (US 5832563), and Hills (US 6068312) as applied in claims 9-14, and 20 above, and further in view of Gostelow (GB 2196239 A).

21. Modified Alden is silent in teaching a holding device to secure the food item on the ends as recited in claim 15, specifically, alligator clips or two-fingered clips having a spring and/or a hook and curved fingers as recited in claims 16-19, and a handle for guiding a food item onto a working platform as recited in claims 17 and 19.

22. Specifically regarding claim 15 and an apparatus system with a holding device for anchoring a food item and the position of the clip on the food item, Gostelow teaches of a grill pan with a retaining mesh clamp for clamping food articles, such as steak, thereon (Abstract and Figure 4 (9)).

23. Regarding a holding device for anchoring the food item, it would have been obvious to one skilled in the art, at the time the invention was made, to have further modified a cambered grill apparatus as disclosed by Alden to include a clamp or hook as disclosed by Gostelow. One would have been motivated to do so, in order to take advantage of the benefit of a clip or clamp to hold the food, such as consistent flavor,

Art Unit: 1761

sanitation and the prevention of sickness. A clip or clamp to hold the food would keep almost cooked pieces of meat or fish from contacting raw pieces, therefore, preventing sickness from food poisoning, in addition a clip or clamp would provide consistent flavor, by not allowing meats or fish with different seasonings to come into contact with one another. Because both items deal with the cooking of a food item, one would have a reasonable expectation of success from the combination.

24. Regarding the position of the clip on the food item it would have been obvious to position the clip on the ends of the fish fillet. One would have been motivated to do so, in order to obtain the benefit of the clip without the destruction of the food product. For example, a piece of steak could be clamped across its top surface without being crushed, however using the same clamp on the top surface of a fish would mush or crush the fish, therefore it would be necessary for the fish to be clamped on its ends.

25. Specifically regarding claims 16-18 and the type of clip utilized on the grill, it would have been obvious for one skilled in the art at the time the invention was made to have further modified a cambered grill apparatus as disclosed by Alden to provide means for anchoring the fish or meat on a grill as taught by Gostelow, for the reasons as stated in paragraph 23, above. To select any conventional means for anchoring (e.g. a clamp, alligator clips, or two-finger clips having a spring and/or a hook) would have been obvious depending on the size and fragility of the food item being cooked. For example, a piece of steak could be clamped across its top surface without being crushed, however using the same clamp on the top surface of a fish would mush or

Art Unit: 1761

crush the fish, therefore the fish would need to be clamped with a different clip; in addition, a piece of steak is generally thicker than a fillet of fish, making it more appropriate to use a different clamp for the application of the fish fillet.

26. Regarding a handle for guiding the smoked fish fillet onto a working platform, as recited in claims 17 and 19, it would have been obvious to one skilled in the art at the time the invention was made to have further modified a cambered grill apparatus as disclosed by Alden to include a handle for guiding the smoked fish fillet onto a working platform. One would have been motivated to add a handle for guiding a smoked fish fillet onto a working platform, so that the removal and placement of the fish fillet could be easily accomplished and there would be less of a chance of the fish falling to the ground and thus becoming unsanitary and inedible.

### ***Conclusion***

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

28. US 4229032 disclose of an implement for cleaning which is composed of a flat upper surface and knives extended downward for cleaning.

29. US Des.324747 discloses of a barbeque grill scraper with sharpened groves for cleaning.

30. US 4619047 discloses of a meat trimming knife with a wrist strain relief device.

Art Unit: 1761

31. US 5471700 discloses of a handle for grill cleaning tools, so that the user does not get burned and can gain a great force with the same effort.

32. US 2003/0088933 discloses of a wire rack with spring clips to hold a toothbrushes in place.

33. US 3761120 discloses of a food patty turning device with a loop or fastener to assist the user.


34. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

35. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

36. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kelly Mahafkey  
Examiner  
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